IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6926 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

AMRUT @ AAMBO GANGARAM SONVANE...Petitioner

Versus

STATE OF GUJARAT & 2 others ...Opponents

Appearance:

MR HR PRAJAPATI for Petitioner

MR SP DAVE, APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 03/12/97

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioner who is under detention pursuant to the order of detention passed on 21st July 1997 by the Police Commissioner, city of Surat invoking his powers under Sec.. 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the Act) so as to deter him from carrying out anti-social activities, calls in

question the legality and validity of that order.

2. In order to appreciate the rival contentions, necessary facts may be stated. The police, in due course, got information that the petitioner was carrying out anti-social activities disturbing the public order. He was found to be the dangerous person as he was committing offences continuously and was disturbing the tempo of public life, paralysing the public life and putting the people to several hardships and hazards. The police also found that with Limbayat Police Station, a complaint of the offences under Sections 392, 342, 427, 452 R/w Sec.114 of the Indian Penal Code and under Sec.. 135 of the Bombay Police Act was lodged because the petitioner with his associates had committed the robbery trespassing into the house of Bhanuben Natvarbhai. During the course of investigation, a knife as muddamal was recovered and seized. Another complaint for the offences under Sections 326, 324, 365, 504 R/w Sec.114 of the Indian Penal Code was lodged with Limbayat Police Station because the petitioner with the active assistance of his compeers kidnapped, and caused injuries to Sanju Mohan by sward blows. The third complaint with regard to the offences punishable under sections 324, 323, 504, 506(2) R/w Sec.. 114 of the Indian Penal Code and Sec.. 135 of the Bombay Police Act came to be lodged with Limbayat Police Station alleging that the petitioner and his associates assaulted Sanjay Mohan and Nana Ganpat Patil with knives and caused serious injuries. The fourth complaint registered with Limbayat Police Station was pertaining to the offences punishable under Section 324 R/w Sec.114 of the Indian Penal Code and Sec.. 135 of the Bombay Police Act. When the Commissioner of Police, on the basis of the above facts and complaint registered, inquired deeply, he found that the petitioner was a headstrong person and by his nefarious activities, he was creating panic in the society challenging the maintenance of public order. The petitioner used to extort money by giving threats or resorting to coercive measures, and those who did not yield to his desire, they were assaulted & beaten brutally and were then made to succumb to his desire or whims. The people considering their safety were not coming forth to lodge complaint and have the action in accordance with law. Hearing about the petitioner or seeing him, the people used to chevy, as they were felling insecured. The Police Commissioner then found that to curb the anti-social activities of the petitioner and make the people free there was no way out but to detain him as under general law it was difficult

to control his activities taking appropriate action. He, therefore, passed the order in question on 21st July 1997. Consequent upon the same the petitioner came to be arrested.

3. The petitioner has challenged the legality and validity of the order on different grounds. According to him, there was no justification to describe him as the dangerous person. Under Article 22(5) of the Constitution of India and Sec.. 9(2) of the Act, the authority passing the detention order was nodoubt vested with privilege not to disclose certain facts in the public interest, but privilege was exercised unjustly. Without application of mind, the authority preferred not to provide necessary particulars of the witnesses whose statements were recorded. For want of necessary particulars, his right to make an effective representation was jeopardized. It is also his case that bail application preferred by the co-accused and the order passed therein by the Court ought to have been considered by the authority passing the detention order and the copies thereof ought to have been supplied to him for necessary study and making effective representation. He thus assails the order and urges me to quash the same.

4. At the time of hearing, I found that the application can well be disposed of only on one ground going to the root of the case and it is about the non-supply of the copies of bail application preferred by the co-accused and order passed therein. I will, therefore, deal with the same and will not dwell upon other grounds to which both the sides have agreed.

5. Under Article 22(5) of the Constitution of India, the detenu has acquired a right to know the grounds on which the order of detention is passed and he has been detained. The authority passing the detention order is, therefore, under an obligation to furnish the copies of all relevant documents which led him to pass the order of detention. If the copies of such documents are not furnished to the detenu, the right of the detenu to make effective representation is jeopardized and in that case, the detention would be bad-in-law and will have to be quashed. This is what has been made clear by the

Appex Court in the case of State of U.P. v/s Kamal Kishore Saini - 1988(1) SCC 287. In the case on hand, the petitioner after being taken into custody pursuant to the order in question, wrote a letter to the Hon'ble Chief Minister on 19th September 1997 and requested to

supply him the copies of bail application preferred by the co-accused Sanjay Mohan Patil and the order passed therein by the Court. He also mentioned in his letter that the number of bail application was Criminal Misc. Application No. 318 of 1977 and bail was granted on 31st March 1997. Despite such request, the copies of bail application and the order passed therein were not furnished to him.

6. At this stage, ld. APP Mr. SP Dave submits that it is not necessary to furnish the copies of all the documents. The copies of those documents having vital importance are supplied, but failure to supply the documents and materials which are only casually and passingly referred or not at all referred in the course of narration of the facts in the grounds of detention and are not relied upon by the detaining authority in making the order, would not render the detention illegal. For his submission, he drew my attention to the decision of this Court rendered in the case of Osman Ali Khatki v/s Commissioner of Police, Rajkot & Another - 1994(1) GLH 512 and also the decision of the Appex Court rendered in the case of Kamarunnissa v/s Union of India - AIR 1991 SC 1640. The principle laid down in both the decisions will not, in my view, help the opponents. In the case of Osman Ali Khatki (Supra), the copy of the panchanama and some other documents were not given to the detenu. It was then held that failure to supply those documents had not resulted into impairment or prejudice to the right of the detenu to make an effective representation and, therefore, non-supply of the copies of panchanama and those documents was not fatal to the order of detention passed. In the case of Kamarunnissa (Supra), the Appex Court has also made it clear that if the documents referred to in the grounds of detention, but not relied upon by the detaining authority while arriving at the subjective satisfaction to detain are not supplied, the same would not vitiate the detention because the copies of the relevant documents and vital documents are required to be given. A detenu in that case must show that non-supply had impaired his rights. What can, therefore, be deduced from these two authorities is that the copies of the documents of vital importance or for relevant consideration, must be supplied so as not to impair the right of the detenu to make an effective representation. But the copies of the documents which do not govern the consideration for passing the order of detention or which are, in other words, of little value and having no bearing for forming an opinion about passing of the detention order, need not be supplied because in that case, right of the detenu

will not be prejudiced or impaired.

7. In view of such law and submissions made by the ld. APP, what is first to be examined is whether the copies of bail application and orders passed therein can be termed as " vital documents"; or trivial one having no impact while forming opinion about passing of the order of detention or whether the same are irrelevant qua issues that arise for consideration. A similar question arose before the Appex Court in the case of M. Ahmedkutty v/s Union of India & Another - 1990(2) SCC 1. It is held that bail application and the bail order constitute vital material and if the said documents are not considered by the detaining authority or copies thereof are not supplied to the detenu, it would be violative of Article 22(5) of the Constitution of India and continued detention would be illegal. This decision of the Appex Court is a clear-cut answer to the submissions made on behalf of the opponents. The bail application preferred by the co-accused and the order passed therein being the vital documents,the copies thereof not only ought to have been supplied by the detaining authority, but that the authority ought to have also considered the same while forming opinion about passing of the order. The authority ought not to have turned his back especially when it was requested by the detenu petitioner to supply him copies of the said documents. But when that is not done, in view of the decision in M. Ahmedkutty (supra), omission to supply the documents being violative of Article 22(5) of the Constitution of India, the continued detention of the petitioner is illegal. The order of detention is, therefore, required to be quashed.

8. For the aforesaid reasons, the order of detention dated 21st July 1997 being invalid and unconstitutional, is hereby quashed and the petitioner-detenu Amrut @ Aambo Gangaram Sonvane is ordered to be set at liberty forthwith if no-longer required in any other case. Rule is accordingly made absolute.

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